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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,	C066326
Plaintiff and Respondent,	(Super. Ct. No. 09F02180)
v.	
RONALD COLLINS,	
Defendant and Appellant.	

Following a jury trial, defendant Ronald Collins was convicted of infliction of corporal injury on a cohabitant resulting in a traumatic condition (Pen. Code, § 273.5, subd. (a)),<sup>1</sup> elder abuse (§ 368, subd. (b)(1)), false imprisonment (§ 236), criminal threats (§ 422), attempting to dissuade a witness (§ 136.1, subd. (b)(1)), and attempting to induce false testimony by force (§ 137, subd. (b)). The jury found the great bodily injury allegation as to the elder abuse

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

conviction (§ 12022.7, subd. (a)) and the corporal injury conviction (§ 12022.7, subd. (e)) to be true. Defendant later admitted a prior domestic violence conviction (§ 273.5, subd. (e)(1)) and the trial court sentenced him to seven years eight months in state prison.

On appeal, defendant contends there is insufficient evidence to support the criminal threats and false imprisonment convictions. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **Prosecution Case**

The victim here, Katie Mask, who was 67 years old at the time of trial, had had a kidney removed and also had memory problems she associates with dementia.

Mask met defendant when he was a security guard where Mask lived. Defendant, who was 10 years younger than Mask, became her state-paid caretaker in 2000. Even though defendant was married to Wanda Stockman, a woman with whom he had a 33-year relationship, Mask and defendant became romantically involved within six months. During her testimony, Mask referred to defendant variously as her "fiancé" and "common law husband."

Defendant controlled Mask's money. She gave her sole source of income, her social security payment, to defendant every month. Mask also supported defendant financially, even though she was not supposed to. Because Mask gave defendant her money, she lost her apartment. Ultimately, in January 2009, Mask moved into a room at a Motel 6 in Sacramento and defendant moved in with her.

According to Mask, defendant had two personalities -- one gentle and sweet and the other cruel. Mask could not anticipate when defendant would change from one personality to the other. Defendant often turned into that other person and assaulted her. Many times, he told Mask that he could get someone who could harm her. He made Mask promise that she would stay with defendant for the rest of her life and not leave him because they loved each other. Defendant often told Mask that if she tried to leave him, he would get someone to do whatever was necessary to stop her. That statement made her afraid because "I didn't know what would happen to me." He also told her to stay away from her adult daughter and son or he would have somebody go to their house. This statement made Mask very uncomfortable. During her relationship with defendant, Mask lived in a state of fear.

While staying at the Motel 6, defendant told Mask that he would harm her if she left through the motel room door. According to Mask, defendant told her "[m]ore than three times" that "he would harm me seriously if I -- if I went out that door." Mask stated that she was not allowed to leave the motel room on her own -- defendant "had to be the one who sent me out in order for me to go." As a result, Mask would never go out of the room because she was afraid to touch the door.

One night in January 2009 at the Motel 6, defendant accused Mask of being unfaithful. Defendant punched Mask, causing her to go numb. The blow knocked her to the bed. Defendant climbed on top of Mask, put his leg into her chest, started "pounding"

her, and choked her until she could not breathe as her head hung off the bed. As he choked her, defendant accused Mask of having affairs with other guys and lying about it. Mask begged for help and told defendant she would tell defendant whatever he wanted to know. Defendant also told Mask that she had let him down because he could no longer pay for property he owned in Louisiana.

Defendant stopped his attack and went into the bathroom. Fearing what might happen to her next, Mask used this opportunity to flee from the room. Because she wanted to get out as quickly as possible, she left without putting on her pants. She fled wearing only a T-shirt. When asked what she thought defendant would do to her if he caught her, Mask stated, "He would finish me off."

Mask first went to the motel lobby, but the receptionist said there was nothing she could do for Mask. Mask then ran to a Starbucks across the street for help. There, she was told to go to the women's restroom and wait for the police.

The front desk clerk at the Motel 6 testified that on January 10, 2009 around 7:00 p.m., she saw a woman run up and say that her husband was trying to kill her. The woman was very scared and "running around like crazy." The clerk asked her to stay, but the woman left while the clerk was calling 911.

On January 10, 2009 around 7:00 p.m., a Sacramento police officer who was at Starbucks on Alhambra and N Streets was told there was a partially dressed woman in the restroom. There the officer found Mask sitting on the bathroom floor crying

hysterically and saying her fiancé had beat her up. Other officers arrived and Mask was taken to her room at the Motel 6 and interviewed by an officer.

Mask told one of the officers that defendant would kill her if he found her. Defendant had told her that it did not matter how many people or police officers were between defendant and her, he was going to kill her. Mask related an incident on the previous day, during which defendant punched her in the eye and she fell on the bed. Defendant then strangled Mask as she fought with him on the bed, causing her to fall on the floor and hit her head. After she fell on the floor, defendant kicked her in the ribs. Defendant told Mask that he would kill her if she went for help.

The officer observed that Mask had numerous bruises on her face and body, including a large bruise around her left eye. A medical examination the following day revealed that Mask had sustained a fracture to the C-2 vertebrae within the past two weeks.

Defendant and Mask were together again at a homeless shelter in March 2009. Mask told a case manager at the shelter that defendant had choked her in January 2009. Defendant was arrested but Mask was afraid. She told the case manager that defendant knew a lot of people, he could make phone calls, and he had contacts outside of jail.

After defendant was arrested, he and Mask corresponded with each other and Mask visited defendant in the county jail. During those visits, defendant told Mask to not testify against

him and to not go to court. Defendant instructed Mask to say that a person named Tina had caused her injuries during a fight at the light rail. Defendant told Mask that he would have a friend do something to her, or that she could get hurt if she did not tell that story. Mask told defendant's story during her testimony at the preliminary hearing.

Mask recounted several incidents of domestic violence during her relationship with defendant. In 2007, defendant "slapped [Mask] around" with an open hand because she planned to marry another man and defendant was jealous. Mask did not talk to law enforcement because she was afraid defendant would "change to the other person" and she wanted him to "stay the good person." She also alluded to other times when defendant choked her, and testified that on some of those occasions defendant told her he would not see her with anybody else.

In December of 2007, Mask told a police officer that defendant had slapped her across the face during the previous month. She had threatened to cut defendant off as her caretaker. Defendant told Mask "he would hurt her bad" if she cut him off.

Defendant's wife, Wanda Stockman, described prior domestic violence perpetrated by defendant on her. Defendant pushed and punched Stockman during an argument at their home in 1994. He may also have choked her during that incident, as he had done so in the past. Defendant also ground his foot into the side of Stockman's head, causing her to sustain a cauliflower ear. Stockman did not report the incident to police because she was

afraid of defendant. During defendant's attacks, he would threaten to harm her if she called the police.

On July 22, 2003, defendant wrestled Stockman to the bed during an argument. Defendant had his knees on Stockman's thighs and was choking her when their adult daughter entered and started arguing with defendant. Defendant went to hit their daughter, but Stockman put herself between them. Stockman did not want to report the incident to the police because she was afraid of repercussions. Nevertheless, their daughter called the police. Stockman told the police that defendant had threatened to kill her or break her arms if she reported the incident. Defendant also kicked Stockman in the groin area and choked her in 2006, when they were living in Louisiana.

### **Defense Case**

Latoya Griffin, a former neighbor of Mask and defendant, testified that Mask was extremely jealous and had problems with confusion and memory.

### **DISCUSSION**

Defendant contends there is insufficient evidence to support his convictions for criminal threats and false imprisonment. We disagree.

#### **I. Standard of Review**

"On appeal, the test of legal sufficiency is whether there is substantial evidence, i.e., evidence from which a reasonable trier of fact could conclude that the prosecution sustained its burden of proof beyond a reasonable doubt. [Citations.] Evidence meeting this standard satisfies constitutional due

process and reliability concerns. [Citations.] [¶] While the appellate court must determine that the supporting evidence is reasonable, inherently credible, and of solid value, the court must review the evidence in the light most favorable to the prosecution, and must presume every fact the jury could reasonably have deduced from the evidence. [Citations.] Issues of witness credibility are for the jury. [Citations.]” (*People v. Boyer* (2006) 38 Cal.4th 412, 479-480 (*Boyer*), disapproved on another ground by *People V. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) As this court has noted, before we can set aside a verdict for insufficiency of the evidence, “‘it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the [finder of fact].’ [Citation.]” *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

## **II. Criminal Threats**

Defendant was charged with violating section 422, criminal threats.<sup>2</sup> “In order to prove a violation of section 422, the

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<sup>2</sup> Section 422 provides in pertinent part: “(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety,



prosecution must establish all of the following: (1) that the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,' (2) that the defendant made the threat 'with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) that the threat--which may be 'made verbally, in writing, or by means of an electronic communication device'--was '*on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,*' (4) that the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances. [Citation.]" (People v. Toledo (2001) 26 Cal.4th 221, 227-228, italics added.)

Defendant contends the threats he made do not qualify under section 422 because each threat was "highly conditional," the threats were equivocal and insufficiently specific, and there was no immediate prospect of execution of any of the threats.

In rejecting a substantial evidence challenge to a section 422 conviction, this court previously observed, "'To

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shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

constitute a criminal threat, a communication need not be *absolutely* unequivocal, unconditional, immediate, and specific. The statute includes the qualifier “so” unequivocal, etc., which establishes that the test is whether, in light of the surrounding circumstances, the communication was *sufficiently* unequivocal, unconditional, immediate, and specific as to convey to the victim a gravity of purpose and immediate prospect of execution.’ [Citation.] ‘[W]hether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the victim an . . . immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone.’ [Citation.] ‘[I]t is the circumstances under which the threat is made that give meaning to the actual words used. Even an ambiguous statement may be a basis for a violation of section 422.’ [Citation.] The [trier of fact] is ‘free to interpret the words spoken from all of the surrounding circumstances of the case.’ [Citation.]” (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1433, original italics (*Hamlin*).)

In *Hamlin*, the defendant argued the evidence showed only a conditional threat, because an audiotape revealed he said to his wife, “. . . I’ll kill you now if you,” followed by an inaudible portion of the audiotape. (*Hamlin, supra*, 170 Cal.App.4th at p. 1432.) We held the jury reasonably could have determined from the surrounding circumstances, including words captured on tape before and after the threat, that the defendant essentially

threatened to kill his wife if she did not cooperate and answer his questions. (*Id.* at p. 1433.)

Other courts have recognized that the threat must be examined in the context of the circumstances in which it was made. "[T]he nature of the threat cannot be determined only at face value. Section 422 demands that the purported threat be examined 'on its face and under the circumstances in which it was made.'" The surrounding circumstances must be examined to determine if the threat is real and genuine, a true threat,' and such threats must be 'judged in their context.' [Citations.]" (*People v. Wilson* (2010) 186 Cal.App.4th 789, 807 (*Wilson*).) Moreover, "[a] communication that is ambiguous on its face may nonetheless be found to be a criminal threat if the surrounding circumstances clarify the communication's meaning. [Citation.]" In determining whether conditional, vague, or ambiguous language constitutes a violation of section 422, the trier of fact may consider 'the defendant's mannerisms, affect, and actions involved in making the threat as well as subsequent actions taken by the defendant.'" (*Wilson, supra*, 186 Cal.App.4th at pp. 807-808.)

Mask told the police that defendant threatened to kill her no matter how many people or police officers she put between defendant and her. She testified that on multiple occasions in the motel room, defendant said "he would harm me seriously if I -- if I went out that door." Defendant also told Mask that he would kill her if she ever went for help. As a result of defendant's threats, Mask was afraid to leave the motel room.

In support of his argument, defendant relies in part on *People v. Brown* (1993) 20 Cal.App.4th 1251, 1253, 1256, which held that a threat to kill the victim if she called the police was too conditional to constitute a violation of section 422. *Brown* was disapproved on this point by our high court in *People v. Bolin* (1998) 18 Cal.4th 297, 338, footnote 12. *Bolin* noted that, "'Most threats are conditional; they are designed to accomplish something; the threatener hopes that they *will* accomplish it, so that he won't have to carry out the threats.'" (*Bolin, supra*, 18 Cal.4th at p. 339.) *Bolin* then went on to explain that "imposing an 'unconditional' requirement ignores the statutory qualification that the threat must be 'so . . . unconditional . . . as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution . . . .' (\$ 422, italics added.) 'The use of the word "so" indicates that unequivocal, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim.' [Citation.] 'If the fact that a threat is conditioned on something occurring renders it not a true threat, there would have been no need to include in the statement the word "so.'" [Citation.] This provision 'implies that there are different degrees of unconditionality. A threat which may appear conditional on its face can be unconditional under the circumstances . . . . [¶] Language creating an apparent condition cannot save the threatener from conviction when the

condition is illusory, given the reality of the circumstances surrounding the threat. A seemingly conditional threat contingent on an act highly likely to occur may convey to the victim a gravity of purpose and immediate prospect of execution.' [Citation.]" (*Bolin, supra*, at pp. 339-340.)

In contending the threats did not satisfy the immediacy requirement, defendant asserts "[t]here was no prospect that anyone would be injured soon." Defendant misapprehends the scope of the statute. Defendant fails to understand the distinction between "[t]he 'immediate prospect of execution' in the context of a conditional threat'" and threats of immediate harm (*Wilson, supra*, 186 Cal.App.4th at p. 807; *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538, fn. 6), the latter of which is not required. The word "immediate," as used in section 422, means "that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out, should the conditions not be met." (*Melhado, supra*, 60 Cal.App.4th at p. 1538.)

When viewed in the circumstances under which they were made, defendant's threats sufficiently conveyed to Mask a gravity of purpose and immediate prospect of their execution. Mask was a virtual prisoner in the Motel 6 room and had been subjected to at least two savage assaults. Those assaults bolstered the threatening nature of defendant's words and gave Mask compelling reasons to leave the motel room and get help when the opportunity presented itself. Her actions upon leaving the room and asking for help -- running half dressed from the

room while defendant was unaware, not stopping until she was directed to the Starbucks restroom, and sobbing hysterically, waiting for the police to come -- demonstrate the seriousness and imminence understood by Mask to be attached to the future prospect of the threat being carried out.

Substantial evidence supports the criminal threats conviction.

## **II. False Imprisonment**

Defendant contends there is insufficient evidence to support his conviction for felony false imprisonment. We disagree.

"False imprisonment is the unlawful violation of the personal liberty of another." (§ 236.) False imprisonment is a felony when "effected by violence, menace, fraud, or deceit." (§ 237, subd. (a), italics added; *People v. Wardell* (2008) 162 Cal.App.4th 1484, 1490 (*Wardell*).) "Menace" is a threat of harm express or implied by words or act. (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1359; *Wardell, supra*, 162 Cal.App.4th at p. 1490.)

Defendant makes two arguments. First, he claims the prosecution either misstated or distorted the evidence when arguing in support of the false imprisonment charge. Since defendant claims insufficient evidence rather than prosecutorial misconduct, what the prosecutor argued to the jury is irrelevant to his contention.

Second, defendant contends that he neither restrained Mask from leaving the motel room nor used force or threats of force

to keep her there. In support of his claim, defendant notes that Mask was not held at gunpoint, or locked in the room, or tied down, and was able to leave the room by simply opening the door and running away.

As we have noted, defendant viciously attacked Mask twice and made several threats to seriously harm her if she left the motel room. As a result of defendant's previous and current physical attacks and the recent threats, Mask was afraid to go out and would not touch the door.<sup>3</sup> "When a rational fact finder could conclude that a defendant's *acts or words expressly or impliedly threatened harm*, the fact finder may find that there is menace sufficient to make false imprisonment a felony. An express threat or use of a deadly weapon is not necessary." (*Wardell, supra*, 162 Cal.App.4th at p. 1491, italics added.)

Defendant's words constituted sufficient threat of force to satisfy the menace element of felony false imprisonment. Moreover, defendant's threats were bolstered by his earlier violent attacks in the motel room and by his prior domestic violence against Mask. Mask's testimony that she would not leave the room because she was afraid to touch the door is substantial evidence that she was restrained in the room against her will. Her means of leaving the room -- running out partially clothed at an opportune time when defendant was in the

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<sup>3</sup> Mask also testified that defendant allowed her to leave the room, but the jury was free to ignore this conflicting testimony.

bathroom -- is further evidence of her having been restrained in the room by menace. Defendant's conviction is supported by substantial evidence.

**DISPOSITION**

The judgment is affirmed.

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MURRAY, J.

We concur:

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RAYE, P. J.

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ROBIE, J.